

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :
of a Dispute Between :
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LOCAL 2698, AFSCME, AFL-CIO : Case 135
: No. 48474
and : MA-7613
:
COLUMBIA COUNTY : Case 139
: No. 48478
- - - - - MA-7617

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME,
AFL-CIO, appearing on behalf of the Union.
Mr. Donald Peterson, Corporation Counsel, Columbia County, appearing on

behalf

ARBITRATION AWARD

The Union and the County named above jointly requested the Wisconsin Employment Relations Commission to appoint the undersigned to hear grievances concerning shift differentials and to issue an expedited Award. After a hearing in Wyocena, Wisconsin, on February 18, 1993, where the parties presented their evidence and arguments, the undersigned arbitrator concludes that these two grievances are to be dismissed.

In theses grievances, the Union is asking for a shift differential to be paid to dietary employees who work shifts of 10:30 a.m. to 7:00 p.m., and to unit assistants who work 4:00 p.m. to 8:00 p.m. Unit assistants received a shift differential when they started, but without administrative authorization, and it was discontinued in May of 1992 when the administration learned about it. Dietary employees never received a shift differential under this contract or prior contracts.

The relevant language of the parties' prior labor contract for 1989-1991 read:

13.08 Employees who commence their regular work shift
on or after 2:30 pm shall receive shift premium pay of
. . .; on or after 11:00 pm, shall receive shift
premium . . .

It was replaced in the 1991-93 contract with this:

13.08 Employees who work a regular scheduled work
shift between the hours of 2:00 p.m. and 11:00 p.m.
shall receive shift premium pay of . . . Employees who
work a regular scheduled shift between the hours of
11:00 p.m. to 7:00 a.m. shall receive shift premium pay
of . . .

The Union notes that the County proposed, but did not get, language to state that the shift differential will be paid where the employee works the majority of the hours. The County notes that it intended to pay a premium for regularly scheduled shifts in those hours and not sporadic hours here and there, while recognizing that shifts could vary, give or take an hour, and recognizing that it needed to put in a nine-hour span to cover for overlap of shifts.

Dietary employees do not work a regular scheduled work shift between 2:00 p.m. and 11:00 p.m. or between 11:00 p.m. to 7:00 a.m. Accordingly, they are not entitled under the contractual language to a shift differential.

Unit assistants, if they work a regular scheduled work shift between the hours noted in Section 13.08, are potentially entitled to a premium pay under the literal interpretation of Section 13.08. The evidence is not clear as to whether the hours worked by unit assistants are "regular scheduled work shifts" as contemplated by the language, or whether the hours unit assistants work are hours they pick up here and there. Unit assistants were not in existence when this language was drafted, and neither party would have known what hours unit assistants would be working and whether they would be receiving a premium pay. Thus, the parties could not have contemplated adding unit assistants to the premium pay language. However, the parties are about to enter into negotiations for a successor contract, and this is an issue that they should address more specifically in those negotiations.

AWARD

The grievances for premium pay are denied.

Dated at Elkhorn, Wisconsin, this 3rd day of March, 1993.

By _____
Karen J. Mawhinney, Arbitrator